

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RICHARD ODERIO
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-21
Case No. 68-1084

S.S.A. No.

DEPARTMENT OF EMPLOYMENT
(Appellant)

Case No. 68-1115

The claimant (Case No. 68-1084) and the Department of Employment (Case No. 68-1115) have appealed from Referee's Decision No. SF-7390 which held the claimant met the eligibility requirements of section 1253(c) of the Unemployment Insurance Code for the week ending December 30, 1967; that he failed to meet the requirements of such section for the next succeeding three weeks but was entitled to reduced benefits with respect to two of such weeks under section 1255.5 of the code; and that he was liable for an overpayment of benefits in the amount of \$50 under section 1375 of the code. The referee also concluded the claimant was properly disqualified under section 1257(a) of the code for a five-week period commencing January 21, 1968, based upon a finding that he wilfully failed to advise the Department of Employment of his hospitalization and inability to work on January 4 and 5, 1968. These cases have been consolidated for consideration and decision under the provisions of section 5107, Title 22, California Administrative Code, since it appears that no right of any party is prejudiced thereby.

The Department of Employment has submitted written argument. The claimant, although afforded the opportunity to do so, has not submitted a reply.

STATEMENT OF FACTS

The claimant, a bartender, sustained an injury while at work on or about November 24, 1967. He filed a claim for workmen's compensation benefits and was paid such benefits from November 25, 1967 through December 20, 1967. He was then released by his physician as able to work but with the understanding he would undergo plastic surgery at some future time.

On January 4, 1968 the claimant entered a hospital for plastic surgery and left the hospital on January 6. He was released as able to work on January 16, 1968. He filed another claim for workmen's compensation benefits on January 25, 1968 and was paid temporary total disability indemnity in the amount of \$70 per week by the employer's workmen's compensation carrier from January 4 through January 15, 1968, both dates inclusive.

The claimant registered for work and filed a claim for unemployment insurance benefits effective December 24, 1967. Thereafter he filed timely weekly benefit claims for each of the weeks ending December 30, 1967, January 6, 13, and 20, 1968. On each claim he certified that he was physically able to work full time each regular workday and that there was no other reason why he couldn't have worked full time each regular workday. The department assigned the week ending December 30, 1967 as a waiting period week. It paid the claimant his full weekly benefit amount of \$65 for each of the weeks ending January 6 and January 13, 1968, but withheld benefits for the week ending January 20, 1968 because it had received information from the disability division of the Department of Employment on January 22, 1968 to the effect the claimant had filed a claim for disability benefits effective December 14, 1967.

On January 26, 1968 the department issued a determination which denied benefits to the claimant under section 1253(c) of the code commencing December 24, 1967 through January 20, 1968, based upon a finding that the claimant was not able to work. The department also held the claimant disqualified for benefits under section 1257(a) of the code for a period of five weeks commencing

January 21, 1968, based upon a finding that he had made a misstatement about a material fact. It also held the claimant liable for an overpayment of benefits in the amount of \$130. The referee modified the determination and overpayment as noted above.

In explanation of his certifications for the weeks ending January 6 and January 13, 1968, the claimant testified he did not realize he was eligible for workmen's compensation benefits at the time he filed these claims for unemployment insurance benefits. He stated the fact that he had been in the hospital two normal working days during the week ending January 6, 1968 simply did not enter his mind, so that he completed his claim form in his usual manner. According to the claimant he was able to work and did look for work each day except for the days he was hospitalized, and his doctor had not told him he was unable to work.

The issues in this case are:

1. For what period or periods was the claimant unable to work and therefore ineligible for benefits under section 1253(c) of the code?
2. Is section 1255.5 of the code applicable?
3. Did the claimant wilfully make a false statement or statements to obtain benefits?
4. Was the claimant overpaid benefits? If so, in what amount and is he liable for the repayment of such benefits?

REASONS FOR DECISION

Section 1253 of the Unemployment Insurance Code provides that an unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if:

"(c) He was able to work and available for work for that week."

Pursuant to Attorney General Opinions Nos. 47/221 (10 Ops. Cal. Atty. Gen. 208) and 54/107 (24 Ops. Cal. Atty. Gen. 81), a claimant must be able to work and available for work for each day during the claimant's normal workweek in order to meet the eligibility requirements of section 1253(c).

The record in this case establishes that the claimant was first released by his physician as being able to work on December 21, 1967. It appears the claimant was able to work and available for work during the week ending December 30, 1967. Therefore this week would constitute the claimant's waiting period week (section 1253(d) of the Unemployment Insurance Code).

During the week ending January 6, 1968, the claimant was able to work and available for work on the first four days of the week but was not able to work nor available for work on January 4, 5, and 6, 1968. At least two of these days would be normal workdays in the claimant's occupation. Under the cited opinions of the Attorney General, the claimant would not be entitled to any unemployment benefits for this week since he was not able to work and available for work on all normal workdays of the week. However, section 1255.5 has been added to the Unemployment Insurance Code, the provisions of which became effective November 8, 1967, but operative with respect to weeks of benefits claimed on and after January 1, 1968. This section provides as follows:

"1255.5. (a) An individual is not eligible for unemployment compensation benefits or extended duration benefits for the same day or days of unemployment for which he is allowed by the Workmen's Compensation Appeals Board, or for which he receives, benefits in the form of cash payments for temporary total disability indemnity, under a workmen's compensation law, or employer's liability law of this state, or of any other state, or of the federal government, except that if such cash payments are less than the amount he would otherwise receive as unemployment compensation benefits or extended duration benefits under this division, he shall be entitled to receive for such day

or days, if otherwise eligible, unemployment compensation benefits or extended duration benefits reduced by the amount of such cash payments.

"(b) Notwithstanding any other provision of this division, an individual who is ineligible to receive unemployment compensation benefits or extended duration benefits under subdivision (a) of this section for one or more days of a week of unemployment and who is eligible to receive unemployment compensation benefits or extended duration benefits for the other days of that week is, with respect to that week, entitled to an amount of unemployment compensation benefits or extended duration benefits computed by reducing his weekly benefit amount by the amount of temporary total disability indemnity received for that week.

"(c) The amount determined under subdivision (a) or (b), if not a multiple of one dollar (\$1), shall be computed to the next higher multiple of one dollar (\$1)."

Prior to enactment of this legislation, we had held that a claimant who was in receipt of temporary total workmen's compensation benefits was eligible for unemployment insurance benefits for the same period, without any reduction in benefits, where the evidence before us showed that the claimant was able to work and available for work within the meaning of the Unemployment Insurance Code. We recognized the broad policy against the duplication of benefits. We believed there was a gap in the law which demanded legislative action. However, we concluded that until such time as the legislature deemed it necessary to take action, there was no law or legal principle precluding a claimant's eligibility for unemployment insurance benefits for the period with respect to which he was entitled to workmen's compensation benefits in the form of temporary total disability indemnity (Benefit Decision No. 6782).

It appears the legislature has now addressed itself to the subject matter by enactment of section 1255.5.

But, the legislature has not barred entirely the payment of unemployment benefits to claimants who are in receipt of cash benefits for temporary total disability indemnity. Under subsection (a), if the cash payments are less than the amount the claimant would otherwise receive as unemployment benefits, the claimant is entitled to receive for such day or days, if otherwise eligible, unemployment compensation benefits reduced by the amount of such cash benefits. Thus with respect to the week ending January 6, 1968, the claimant received cash payments of \$10 for temporary total disability indemnity for each of the days of January 4, 5 and 6, 1968. His weekly benefit amount for unemployment compensation was \$65 or \$9.29 per day. Since for these three days the claimant received cash payments in excess of his daily unemployment compensation benefits, he was not eligible for any benefits for those days. Even if the cash payments were less than his daily unemployment compensation benefit, he would not be eligible for reduced benefits for those days because he was not "otherwise eligible" on those days, being unable to work as required by section 1253(c) of the code.

However, for the remaining four days of the week the claimant did not receive any cash benefits for temporary total disability indemnity and he was able to work and available for work on those days. We must then look to the provisions of subsection (b) of 1255.5 to determine what unemployment compensation benefits, if any, he was entitled to receive for those days.

The cardinal rule in the construction of statutes is to follow the legislative intent and that intent must be determined from the express language of the statute as far as possible. Where the meaning of the language of the statute is free from ambiguity, the intention of the legislature must be determined from that language, and it cannot be rewritten through interpretation to conform to a presumed intention which is not expressed, however desirable such a result might appear to be and even though the consequences of applying the express language would be to defeat the object of the statute (Seaboard Acc. Corp. v. Shay (1931), 214 Cal. 361, 5 P. 2d 882; Dept. of Motor Vehicles v. Industrial Accident Commission (1948), 83 Cal. App. 2d 671, 189 P. 2d 730).

The wording of subsection (b) of code section 1255.5 is not ambiguous. We conclude that by use of the words at the commencement of this subsection "Notwithstanding any other provision of this division", the legislature intended that such section would be fully controlling as to the eligibility for benefits of individuals whose circumstances fall within the purview of the section. If the individual is ineligible to receive unemployment insurance compensation benefits under subsection (a) for one or more days of a week and if he is eligible to receive unemployment compensation benefits for the other days of that week, then with respect to that week he is entitled to unemployment compensation benefits computed by reducing his weekly benefit amount by the amount of temporary total disability indemnity received for that week.

Here the claimant was ineligible to receive unemployment insurance compensation benefits under section 1255.5(a) of the code for three days of the week. However, he was eligible to receive unemployment compensation benefits for the other four days of the week, being able to work and available for work on those days. Thus he is entitled to receive \$65 (his weekly benefit amount) less \$30 (temporary total disability indemnity), or \$35. This creates an overpayment of \$30 for that week.

With respect to the week ending January 13, 1968, the claimant received temporary total disability indemnity in excess of his weekly benefit amount and was therefore ineligible for unemployment insurance benefits under section 1255.5(a). This creates an overpayment of \$65 for that week.

For the week ending January 20, 1968, the claimant received \$20 temporary total disability indemnity for January 14 and 15, 1968. The remaining five days of the week he was able to work and available for work. Thus under section 1255.5(b) he was entitled to receive \$45 in unemployment insurance benefits. The department withheld the payment of benefits for this week. Consequently there is no overpayment and the claimant is entitled to an offset in the amount of \$45 against any recoverable overpayment.

Section 1257 of the Unemployment Insurance Code provides an individual is also disqualified for unemployment compensation benefits if:

"(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

We accept the claimant's testimony that he was not aware of his entitlement to workmen's compensation benefits when he certified for benefits during the weeks ending January 6, 13, and 20, 1968. The facts show that he did not even file a claim for workmen's compensation benefits with the insurer until January 25, 1968. However, we must conclude that he wilfully made a false statement when he claimed benefits for the week ending January 6, 1968 and certified that he was physically able to work each regular workday and that there was no other reason why he couldn't have worked each regular workday during that week. He had surgery performed and was hospitalized on January 4, 5 and 6. He obviously was unable to work and was not available for work on those days. We simply cannot accept the claimant's testimony that these facts did not enter his mind when he completed his claim form and submitted it to the department. We conclude that the claimant so certified for the purpose of obtaining benefits and was properly disqualified under section 1257(a) of the code.

Section 1375 of the code provides that any person who is overpaid benefits is liable for the amount of overpayment unless:

"(a) The overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the recipient, and

"(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience."

We have found herein that the claimant wilfully made a false statement to obtain benefits. Therefore

under the provisions of section 1375(a) recovery of the overpayment may not be waived.

DECISION

The decision of the referee is modified. Benefits are denied as provided in the decision of the referee. The claimant is disqualified under section 1257(a) of the code for the five-week period as provided by section 1260(d) of the code. The claimant is liable for the repayment of benefits in the amount of \$50.

Sacramento, California, August 6, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

LOWELL NELSON

JOHN B. WEISS